IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

W.A. No.2173 of 2000

1. J.D.Ranganathan
2. J.D.Balakrishnan .. Appellants(Petitioners)

-vs-

1.Special Commissioner for
Land Administration,
Govt. of Tamil Nadu,
Madras.

2.Additional Collector,
Coimbatore. .. Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order made in W.P.No.20084 of 1993, dated 08.11.2000. Presented under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records on the file of first respondent in his proceedings No.1. 16151/G3 dated 28.9.1993 and quash the same and direct him to grant recognition for drawal of water for Irrigation from the well in S.No.148 by electric Motor Pump set.

For Appellants : Mr.K.V.Subramanian, S.C.
For Mr.R.Kannan
For Respondents : Mr.P.Subramanian,G.A.

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J U D G M E N T

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned single Judge dated 08.11.2000 made in W.P.No.20084 of 1993, in and by which the learned Judge after finding that the petitioners are not entitled to any relief, dismissed the writ petition.

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2. According to the writ petitioners, they are agriculturists and are brothers. Both own lands in Salavansickenpatti Pudur, Vagatholuvu Village, Udumalpet Taluk. Survey No.148 is classified as Natham Poromboke and the same is situated by the side of their house and patta lands. They dug a well spending Rs.1,00,000/- in Survey No.148 even in the year 1967. There is sufficient water in the well. They want to irrigate their lands from the well situated in S.No.148 classified as Natham Poromboke. They applied to the second respondent for recognition of irrigation from the well by using electric motor pump set through pipes laid underground for their lands in S.Nos.22/1, 22/3, 23, 24, 25 and 26 in Salavansickenpatti Pudur, Udumalpet Taluk. The second respondent rejected their application for recognition on 31.12.1976 on the ground that it would adversely affect the public wells in the village site. An appeal filed by them to the then Board of Revenue was also rejected on 08.05.1979. A revision was filed against the said order. The Government by its order in G.O.Ms.848 dated 09.04.1981 allowed their revision and permitted them to draw water for irrigation purposes from the well in S.No.148 classified as Natham Poromboke by electric motor pump set through pipes laid underground in S.No.22 etc. and in the same order, the Government directed the authorities to collect Track Rent for pipes laid in S.No.35. Initially, the said permission was granted for five years and before the expiry of five years, the writ petitioners applied for renewal of recognition and they were granted permission for another five years with effect from 20.09.1996. Before the expiry of the second renewal, the petitioners applied to the second respondent for renewal of recognition and the second respondent passed an order on 14.03.1993 rejecting the permission for renewal of recognition. The petitioners filed an appeal on 23.03.1993 to the first respondent against the order of the second respondent rejecting the application for the renewal of recognition and the first respondent dismissed their appeal on 28.09.1993. Aggrieved by the said order passed by the first respondent and having no other effective remedy, they filed the writ petition.

3. The respondents have filed a counter affidavit disputing various averments made by the petitioners. It is pointed out that the Government in their order in G.O.Ms.No.1618 Revenue Department dated 06.12.1991 issued a general order prohibiting grant of permission and to lay pipe line in poromboke lands to take such well water to other agricultural lands. Taking note of the said Government Order, permission for renewal of Track Rent which was already granted was rejected by proceedings dated 14.03.1993. The appeal filed before the Special Commissioner, Land Administration was also dismissed.

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4. The learned single Judge, after finding that the petitioners are not entitled for any relief, dismissed the writ petition. Hence the present writ appeal.

5. Heard the learned Senior Counsel for the appellants as well as the learned Government Advocate for the respondents.

6. It is brought to our notice that as early as on 09.04.1981, the Government after taking note of various aspects and after getting a report from the Collector, Coimbatore, accepted the case of the writ petitioners and permitted them to take water through pipe line underground to S.Nos.22,23,24,25,26 etc., and recognised their action and also directed that Track Rent be collected from them. In fact, in the same order, the petitioners have demonstrated that similar permission was granted, namely, permission to lay pipe line in a poromboke land in the cases of Thiru P.Guruswamy Naidu, Thiru Balusamy Naicker and Munusamy Naicker. It is not brought to our notice no one has complained that by taking water from the land in question, it has caused loss to anyone.

7. The learned Senior Counsel for the appellants has also brought to our notice that the patta issued by the Tahsildar, Udumalpet with diagram/sketch appended to it makes it clear that in the Natham Poromboke, a well is there and from the said well, the writ petitioners/appellants want to take water to the other land by laying pipe line in a poromboke land.

8. The learned Judge referred to a general ban order issued by the Government on 06.12.1991 in G.O.Ms.No.1618, as rightly pointed out by the learned Senior Counsel for the appellants, in a dispute relating to Survey No.74 in Dadanaickenpatti Village, Palani Taluk, Dindigul Anna District, while considering the claim of a particular individual and at the end of the order dated 06.12.1991, imposed a ban prohibiting laying pipe line in a poromboke land. We perused the said Government Order. Even if we accept that the said Government Order is valid, the same is applicable from the date on which it was issued, namely on 06.12.1981. As rightly pointed out, in the case on hand, orders were issued even in the year 1981. While considering the said Government Order, learned single Judge of this Court in W.P.No.17997 of 1995 dated 23.10.2003, on going through the language used in the said Government Order, rightly concluded that the same applies prospectively and it is not applicable to the persons who are drawing water from the well situated in Natham Poromboke. On going through the said Government Order, we are in agreement with the conclusion of the learned Judge.

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9. All the above mentioned relevant aspects have not been adverted to by the learned Judge who committed an error in dismissing the writ petition. Taking note of the earliest order passed by the Government namely 09.04.1981, the subsequent periodical orders accepting Track Rent for a period of five years and so on, the patta issued by the Tahsildar, Udumalpet, in respect of the entire Natham land inclusive of the well therein and the fact that G.O.Ms.No.1618 is applicable prospectively i.e. from 06.12.1991, we are satisfied that the petitioners/appellants are entitled for the relief and the impugned proceeding of the first respondent dated 28.09.1993 is liable to be quashed and accordingly quashed. It is made clear that if any genuine complaint as regards diminishing water in the public well is received by the Collector, Coimbatore, or any lower level Officer, they are free to enquire and depending on the enquiry, they are free to pass orders/take action in accordance with law. In view of our conclusion, the first respondent, viz., Special Commissioner for Land Administration, is directed to grant recognition for drawal of water for irrigation from the well in S.No.148 by electric motor pumpset within a period of four weeks from the date of receipt of a copy of this order. This said direction is subject to the conditions imposed earlier as well as the above mentioned observation.

With the above observation, the writ appeal is allowed. No costs.

gms

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Special Commissioner for
Land Administration,
Govt. of Tamil Nadu, Madras.

2. The Additional Collector, Coimbatore.

+ 1 cc to Mr. M. A. Abdul Wahab, Advocate SR No. 54671
+ 1 cc to The Government Pleader SR No. 54441

NTK(CO)
SR/24.11.2006

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